

Court of Appeals, State of Michigan

ORDER

Delta Air Lines v City of Romulus

Docket No. 247575

LC No. 00-263925

Michael J. Talbot
Presiding Judge

William C. Whitbeck

Kathleen Jansen
Judges

The Court orders that the motion for reconsideration is DENIED.

The case on which appellant relies in its motion for reconsideration is distinguishable from the facts of the present case. *Thrifty Royal Oak v Royal Oak*, 207 Mich App 707 concerned a refund on taxes paid on an assessment that was challenged. Unlike the present case, *Thrifty* did not involve a voluntary or mistaken payment. Rather, the issue in *Thrifty* was the timing of the payments, and whether the overpayment should have been calculated from the summer installment due date or the October due date. The circumstances of that case, where the petitioners successfully challenged their assessments, set up the basis for finding that the payments were unlawful. This does not contradict the statement in *National Bank of Detroit v Detroit*, 272 Mich 610, 614-615; 262 NW2d 422 (1935), that a tax that is voluntarily paid without protest is not unlawful.

In any event, this Court is still faced with reconciling two conflicting provisions. MCL 211.53a specifically states that if a taxpayer pays taxes in excess of the correct amount because of a clerical error or mutual mistake of fact, the taxpayer may recover the excess without interest. Without regard to *Thrifty*, this more specific provision governs.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 24 2005

Date

Sandra Schultz Mengel
Chief Clerk